PUSAT BANDAR DAMANSARA SDN BHD & ANOR

v.

SPIRO SDN BHD

HIGH COURT MALAYA, KUALA LUMPUR
ABDUL AZIZ MOHAMAD J
[CIVIL SUIT NO: F23-311-1986]
19 APRIL 2002

CONTRACT: *Sale and purchase of property - Breach - Whether sale agreement or moneylending transaction - Poh Kim Kang & Ors v. Ishak Lambik & Anor*

The plaintiffs claimed for certain reliefs consequent upon the termination of two agreements for the sale of some property by the plaintiffs to the defendants, which arose as a result of the defendant's failure to make payments due under the agreements. The defendants contended that the agreements constituted a "sale of property cum money lending transaction", *ie*, that the balance purchase price of the property concerned was deemed to have been paid by the defendants with a loan from the plaintiffs, which was to be repaid with interest by monthly instalments over a number of years.

Held:

[1] Following *Poh Kim Kang & Ors v. Ishak Lambik & Anor*, this action herein was simply a case of sale of property on credit, with the plaintiffs charging interest for delayed payment. It was not a case of loan of money. (pp 681 h-i & 682 a)

[2] The balance purchase price of the property did not pass hands from the plaintiffs to the defendants. If otherwise, the sum would have been used by the defendants to pay for the property in full, and the property would have been registered in their name, which was not the case here. There was no evidence of a loan and hence, there was no money lending transaction between the parties. (pp 682 e-f, g & 683 a)

[Claim allowed.]

Case(s) referred to:
Poh Kim Kang & Ors v. Ishak Lambik & Anor [1971] 2 MLJ 251 ***(foll)***

For the plaintiffs - Mathias Chang (PC Neoh); M/s Suhaimi Khor Zulkifli & Chang
For the defendants - Hamid Sultan Abu Backer; M/s Hamid Sultan & Partners

Reported by Raja Vishnu Sivarajah

JUDGMENT

Abdul Aziz Mohamad J:

In this action the plaintiffs seek certain reliefs consequent upon the termination by them of two agreements, each for the sale of a shop-lot by the plaintiffs to the defendants, as a result of breach of the agreements by the defendants by their failure to make payments that the plaintiffs claim to be due under the agreements.

The defendants contend that each of the agreements, as their counsel says in his written submission, constitutes a "sale of property cum moneylending transaction". Whether that is so is the sole question that it has been agreed that I need to decide. To decide that question it is necessary to look at one agreement only, because the other has the same characteristics. I shall look at the agreement for the property called Lot F13.

The agreement was dated 30 March 1984. The purchase price was RM983,135. The defendants were to have made three initial payments totalling RM198,135, the last to have been on 11 January 1984.

The balance of RM785,000 was to be paid over a period of fifteen years by monthly instalments, each of RM10,385.40, from 1 June 1984, so that if the defendants faithfully made payments according to the agreement, after fifteen years they would have paid RM1,869,372, a sum exceeding the balance purchase price of RM785,000 by RM1,084,372. Because of that, learned counsel for the defendants submits that the balance purchase price of RM785,000 must be deemed to have been paid by the defendants with a loan of RM785,000 from the plaintiffs, which loan was to be repaid, with interest of RM1,084.372, by monthly instalments over fifteen years. The agreement was terminated on 27 October 1986. This action was filed on 24 December 1986.

Learned counsel for the plaintiffs has in her written submission advanced several reasons, supported by authorities, why the plaintiffs cannot be considered to have loaned the defendants a sum of RM785,000. I agree with those reasons. In my opinion this is simply a case of sale of property on credit, with the plaintiffs charging interest for delayed payment. It is not a case of loan of money. An authority that learned counsel for the plaintiffs cites that I shall use in support of that conclusion is the passage

from *Law of Money Lenders in Australia and New Zealand* by Clifford L. Pannam which Winslow J cited in *Poh Kim Kang & Ors v. Ishak bin Lambik & Anor* [1971] 2 MLJ 251 at p. 254 C-E (left):

> A vendor may agree to sell goods to a purchaser upon terms other than in return for an immediate cash payment. He may, for example, agree to accept payment of the purchase price in weekly or monthly instalments of a fixed amount – even though possession of the goods is to be given to the purchaser immediately. Interest will probably be charged on the outstanding balance. Such an agreement may contain a term that property in the goods is not to pass until the last payment has been made. On the other hand property in the goods may pass immediately to the purchaser. Whatever form the agreement takes there is a deferment in payment for the goods and interest will normally be charged for the privilege of not paying cash. The question arises as to whether these transactions are loans of money. It seems reasonably clear that they are not.

In his written submission, learned counsel for the defendants points to a letter from the plaintiffs dated 2 December 1986, before this action was filed, as clearly demonstrating that there was a loan on which interest had been charged. That letter annexed a calculation showing how the sum of RM288,145.40 that the plaintiffs now claim in respect of the two agreements was arrived at. The calculation included a sum described as "interest on loan (1 June 1984-30 November 1986)". But learned counsel for the defendants concedes that the sum of RM785,000 did not pass hands from the plaintiffs to the defendants. What he maintains is that the sum was credited as having been paid. But he does not answer the argument of learned counsel for the plaintiffs that if so the sum would have been used by the defendants to pay for the property in full and the property would have been registered in their name, which was not the case. In fact, according to s. 6.02 of either agreement the title to the property would not be transferred to the defendants unless they had paid the full purchase price and all other moneys payable under the agreement. The fact that if there had been a loan it would not have been of more benefit to the defendants than if there had been no loan demolishes the argument that there had been a loan credited as having been paid to the defendants. I agree with learned counsel for the plaintiffs that as there is no evidence of a loan in fact and in substance, the word "loan" in the aforementioned calculation must be treated as a misnomer, the misnomer being the circumstance that the plaintiffs had to wait fifteen years to get the full purchase price of the property that they had contracted to sell to the defendants.

Since there was no loan from the plaintiffs to the defendants, there was no moneylending transaction between them involved in the agreements.

I therefore allow with costs the plaintiffs' claim to the extent that I find that the defendants are liable to the plaintiffs for sums rightly due to them in consequence of the termination of the two agreements. As agreed, I order that the determination as to quantum, that is, as to what sums under what heads of claim are rightly payable to the plaintiffs, be done by the senior assistant registrar.